IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

Crl.Rev.Pet.No. 53 of 1999()

CRA.138/1996 of I ADDL.SESSIONS COURT, ERNAKULAM
ST.179/1992 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI
.....

REVN. PETITIONER(S): (APPELLANT IN APPEAL CRL.APPEAL 138/1996 AND ---------- ACCUSED IN S.T. 179/1992.

ROYCE JOSEPH, S/O.JOSEPH,
AKKARA HOUSE, C.C. 15/66,
MAVELI SAW MILL ROAD,
CHEMMEENA JUNCTION, KARUVELIPADY,
KOCHI.5.

BY SRI.R.D.SHENOY, SENIOR ADVOCATE
BY ADVS.SRI.S.VINOD BHAT
SRI.S.SACHITHANANDA PAI

RESPONDENT(S): (RESPONDENTS IN THE APPELLATE COURT AND ---------- COMPLAINANT IN THE TRIAL COURT).

1. **FOOD INSEPCTOR,**
ZONAL OFFICE, KOCHI CORPORATION,
MATTANCHERRY.

2. **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/03/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER ON CRL.MP. NO.221/1999 IN CRL.RP. NO.53/1999

DISMISSED

09/03/2007 **SD/- K.HEMA, JUDGE**

TRUE COPY

P.A. TO JUDGE

tss

K.HEMA, J.

Crl. R.P.No.53 of 1999

Dated 9th March, 2007.

O R D E R

The revision petitioner was convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- and in default to undergo simple imprisonment for 45 days for offences under Sections 2(1)(a)(m), 7(i), 7(v) and 16(1)(a) of the Prevention of Food Adulteration Act read with Rule 5 and Appendix B.A. 17.01 of P.FA. Rule, by the Magistrate's Court. In appeal, the said conviction and sentence were confirmed by Additional Sessions Court and hence this revision.

2. According to prosecution, on 14.11.1991 at about 10.30 a.m, complainant-PW1 visited the Provision Store run by accused and, after complying with the formalities under the Act and Rules, he purchased 375 grams of coconut oil, which was divided into three and sampled. One of the samples was sent for analysis and it was reported that the sample did not conform to the standard prescribed and hence adulterated. A complaint was therefore filed against the revision petitioner.

3. Prosecution examined PWs 1 to 5 and marked Exhibits P1 to P10 on its side. Accused examined DW1 on his side. On an analysis of the evidence, trial court found that the prosecution proved its case and the argument advanced on behalf of the accused that there is violation of Rule 14 of the P.F.A Rules was rejected. In appeal also, said findings were confirmed.

4. Learned counsel appearing for revision petitioner strongly contended that there is violation of Rule 14, since the evidence adduced in this case discloses that an intermediary vessel was used for taking the sample, but, there is no evidence to show that such vessel was in a clean and dry form. In the absence of any proof that the intermediary vessel, spoon etc. used for the purpose of sampling are clean and dry, the accused is entitled to acquittal. He placed reliance upon the decision reported in ***Babu vs. Food Inspector*** **(2003 (2) KLT 90)** by Division Bench of this Court.

5. Learned counsel appearing for revision petitioner also referred to the evidence in this case and argued that both the courts below erred in entering a finding that there is evidence to show that all the bottles used for sampling were clean and dry. It is strongly contended that this finding is opposed to the evidence and facts disclosed from the records. The lower appellate court held that PW1 specifically stated that he purchased coconut oil in a 375 grams bottle and then it was divided into three other bottles and that all these bottles were dry and clean and were taken from his office. A reading of the evidence of PW1 will go to show that this finding is contrary to the evidence given by him.

6. It is true that in the chief examination, PW1 stated that the sample was divided into three and taken in three glass bottles which were

clean and dry. But, in the cross examination it was brought out that sample was taken by PW1 by pouring coconut oil into a glass bottle by using a laddle. Thereafter, the said oil was transferred to three different bottles. It is clear from evidence of PW1 that four bottles were used in the process of sampling and in addition to this, one laddle was also used. But, PW1 has not stated that either the ladle or the fourth bottle which was used for taking the sample was dry and clean. Even though this fact was brought out in cross examination, the fact that those intermediary bottle and ladle were dry and clean were not brought out in the re-examination, no explanation was sought for in the re-examination regarding the condition of additional bottle and the laddle.

7. It is held in the decision cited by learned counsel appearing for revision petitioner that not only the container in which the sample of food articles are taken, but the intermediary vessel, spoon etc. in which food articles are handled for the purpose of sampling shall also be clean and dry. In the absence of evidence to show that the intermediary vessel or spoon are not clean and dry, there is clear violation of Rule 14 and the accused will be entitled for acquittal. Learned Public Prosecutor argued that PW1 has stated that all the bottles were brought from the office of PW1 and hence even though the fourth bottle is involved in this case, it has to be presumed that the intermediary bottle was clean and dry. The

official act has to be presumed to be regularly performed under Section 114 of the Evidence Act. It is true that PW1 stated that all the bottles were brought from the office. But, there is no guarantee that those bottles were clean and dry, in the absence of evidence regarding the nature of the intermediary vessel used. The accused having succeeded in bringing out that a fourth bottle was also used, it is the duty of the prosecution to prove that not only the three bottles but the other bottle was also clean and dry.

8.It is not sufficient if it is stated that such vessel is brought from the office. There is absolutely no evidence to show from where this laddle has come, whether it was brought from the officer or whether it was kept in the shop in a clean and dry form. It is also to be noted that Food Inspector himself has no case that the sample was given by the accused to him. He himself has drawn the sample by using the laddle. Therefore, no presumption under Section 114 can be drawn, even if the evidence of PW1 is fully accepted.

9. The accused has succeeded in bringing out in cross examination that an additional bottle and spoon were also involved in the process of sampling and there is no evidence regarding its good condition. In the above circumstances, I hold that the conviction and sentence passed against the revision petitioner are unsustainable, since there is clear

violation of Rule 14 of the P.F.A Rules. In the result, the conviction and sentence passed against petitioner are set aside. The accused is found not guilty and he is acquitted of the offences under Sections 2(1)(a)(m), 7(i), 7(v) and 16(1)(a) of the Prevention of Food Adulteration Act read with Rule 5 and Appendix B.A. 17.01 of P.FA. Rule. He is set at liberty forthwith.

This revision petition is allowed.

K.HEMA, JUDGE.

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